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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

.....X
THE NEW YORK TIMES COMPANY and
CHARLIE SAVAGE,

Plaintiffs,

18 Civ. 709 (ER)

v.

ANSWER

DEPARTMENT OF DEFENSE,

Defendant.

.....X

Defendant the Department of Defense (“DOD”), by its attorneys, answers the complaint upon information and belief as follows:

1. The allegations in paragraph 1 constitute a characterization of this action and the relief requested by Plaintiffs, to which no response is required. To the extent a response is

required, denies the allegations in paragraph 1, except admits that this action is putatively brought under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. The allegations in paragraph 2 constitute a characterization of Plaintiffs’ FOIA request, to which no response is required. To the extent a response is deemed required, the Court is respectfully referred to the FOIA request for a true and complete statement of its contents. Neither admits nor denies the allegations in paragraph 2 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 3.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.

5. Admits that DOD is an agency of the federal government. Neither admits nor denies the allegations in paragraph 5 concerning whether DOD has possession or control of the records that Plaintiffs seek, as doing so would reveal information exempt from disclosure under FOIA.

6. The allegations in paragraph 6 constitute legal conclusions as to jurisdiction, to which no response is required.

7. The allegations in paragraph 7 constitute legal conclusions as to venue, to which no response is required.

8. Denies the allegations in the first sentence of paragraph 8. The allegations in the second sentence of paragraph 8 constitute legal conclusions, to which no response is required.

9. Admits that Plaintiffs submitted a FOIA request to DOD on or about October 27, 2017, and respectfully refers the Court to the FOIA request for a true and complete statement of its contents. Neither admits nor denies the allegations in paragraph 9 concerning an alleged document titled “Principles, Standards or Procedures,” or “PSP,” as doing so would reveal information exempt from disclosure under FOIA.

10. Admits that DOD acknowledged receipt of the FOIA request by letter dated November 2, 2017, and respectfully refers the Court to that letter for a true and complete statement of its contents.

11. Admits that Plaintiff submitted an appeal on or about November 14, 2017.

12. Admits that DOD has not provided a final response to Plaintiffs’ FOIA request, but denies that DOD has failed to comply with any time frame required under FOIA.

13. DOD repeats, realleges, and reincorporates its responses to the foregoing paragraphs as though fully set forth herein.

14. The allegations in paragraph 14 constitute legal conclusions, to which no response is required.

15. Denies that DOD has failed to meet any statutory deadline. The allegations in the second sentence of paragraph 15 constitute legal conclusions, to which no response is required.

16. Denies the allegations in paragraph 16 without admitting or denying the existence of records responsive to Plaintiffs’ FOIA request.

17. Denies the allegations in paragraph 17 without admitting or denying the existence of records responsive to Plaintiffs’ FOIA request.

18-21. The remainder of the complaint contains a request for relief, to which no response is required. To the extent a response is deemed required, DOD denies the allegations contained in the remainder of the complaint and states that Plaintiffs are not entitled to the requested relief or any relief whatsoever.

DOD denies all allegations in Plaintiffs' complaint not expressly admitted or denied.

DEFENSES

FIRST DEFENSE

DOD is unable to confirm or deny the existence of responsive records without revealing information that is exempt from disclosure under FOIA. *See* 5 U.S.C. § 552(b).

SECOND DEFENSE

Plaintiffs fail to state a claim upon which relief may be granted.

THIRD DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs' request for relief that exceeds the relief authorized under FOIA, 5 U.S.C. § 552.

DOD may have additional defenses which are presently unknown but may be ascertained at a later time. DOD reserves the right to assert each and every affirmative or other defense that may be available, including any defenses available pursuant to Federal Rules of Civil Procedure 8 and 12.

WHEREFORE, Defendant is entitled to judgment dismissing Plaintiffs' complaint with prejudice and granting such further relief as the Court deems just, including costs and disbursements.

Dated: March 5, 2018

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